

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

22-CV-7505 (BMC)

JUSTIN SHERWOOD,

Plaintiff,

United States Courthouse
Brooklyn, New York

- versus -

May 30, 2023
3:00 p.m.

THE CITY OF NEW YORK, ET AL,

Defendants.

-----x

TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARING
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES

Attorneys for Plaintiff: COHEN & GREEN P.L.L.C
1639 Centre Street, Suite 216
Ridgewood, New York 11385
BY: GIDEON ORION OLIVER, ESQ.
REMY GREEN, ESQ.

Attorney for Defendants: NEW YORK CITY LAW DEPARTMENT
The City of New York, 100 Church Street
Officer Sturman, and New York, New York 10007
Officer Reis BY: JOHN EDMUND SCHEMITSCH, ESQ.

Attorney for Defendant: WORTH, LONGWORTH, & LONDON, LLP
Officer John Madera 111 John Street
Suite 640
New York, New York 10038
BY: DOUGLAS LABARBERA, ESQ.

1 Attorney for Defendant: KARASYK & MOSCHELLA, LLP
2 Det. Samantha Sturman 233 Broadway, Suite 2340
3 New York, New York 10279
4 BY: JOHN W. BURNS, ESQ.
5
6
7

8 Court Reporter: LEEANN N. MUSOLF, RPR, CCR
9 Phone: 718-613-2489
10 Email: lmusolf.edny@gmail.com
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

LEEANN N. MUSOLF, RPR, Official Court Reporter

Proceedings

1 (All present via videoconference.)

2 THE COURTROOM DEPUTY: Sherwood versus The City of
3 New York, et al.

4 Counsel, note your appearances, beginning with
5 Plaintiff counsel.

6 MR. OLIVER: Gideon Oliver, cocounsel for Plaintiff.

7 MS. GREEN: It's Remy Green joining Mr. Oliver, but
8 I won't be speaking.

9 MR. SCHEMITSCH: John Schemitsch for Defendant
10 City of New York, Officer Sturman, and Officer Reis.

11 MR. LABARBERA: Good afternoon, Your Honor.

12 Doug LaBarbera for Defendant New York City Police
13 Officer John Madera.

14 MR. BURNS: Good afternoon, Your Honor.

15 John Burns on behalf of Detective Samantha Sturman.

16 THE COURT: I really haven't had a chance to study
17 the letter you filed a half an hour ago. I've read it, I
18 think I understand it, but what I'm going to do is go through
19 the discovery disputes and I will ask you, before I rule on
20 them, if it's still live or if, in fact, you have resolved
21 them. I think I know as to some of them, but like I've said,
22 I have not had a chance to go over the letter in detail.

23 So, first, on the extension of time. I am not
24 understanding why the defendants have produced 100 pages of
25 documents at this stage of the case. What is the reason for

Proceedings

1 that?

2 MR. SCHEMITSCH: Yes, Your Honor, I apologize for
3 any delay with that. We did have a number of internal
4 extensions from both sides with document responses and
5 production --

6 THE COURT: No, no, no, stop. There is no such
7 thing as internal extensions, okay? This is my case even more
8 than it's your case. If there's a consensual extension, you
9 bring it to me and then I decide whether there's good cause to
10 allow it, because most of the time I don't.

11 So what is the good cause? Because consent is not,
12 consent is not good cause.

13 MR. SCHEMITSCH: I understand, Your Honor. I
14 apologize. I was sick a number of times over the last couple
15 of months and was out due to that. The delay is primarily
16 because of the confidentiality stip at this point and we would
17 be prepared, within ten days, to produce responsive documents
18 following the entry of the confidentiality stipulation.

19 THE COURT: Well, all right. Let's skip ahead then
20 to the confidentiality stipulation.

21 As I understand it, the sticking point from the
22 defendants' perspective on that is that you don't want
23 disciplinary or grievance information about these officers
24 publicly disclosed or available to anyone; is that it?

25 MR. SCHEMITSCH: That's it, Your Honor.

Proceedings

1 THE COURT: Okay. Isn't there already a law that
2 they could get it through that would make it publicly
3 available?

4 MR. SCHEMITSCH: A number of courts have found under
5 appeal of section 50(a), which is I believe the law you're
6 referring to, does not necessarily govern in terms of
7 confidentiality orders. The Southern District --

8 THE COURT: Well, yeah, I'm not bound by it; I agree
9 with that. The law has no impact on discovery in a federal
10 action. But my point is, what are you really giving up if
11 they can get the documents and use them publicly anyway?

12 MR. SCHEMITSCH: Your Honor, not everything is
13 publicly accessible, as a primer, but we do believe,
14 essentially, the confidentiality order should be put in place
15 given that there's a lot of information in these documents as
16 to nonparties, as to investigations, and -- as well as
17 complaints issued by third parties.

18 THE COURT: But all of that would come out under the
19 new statute, right?

20 MR. SCHEMITSCH: Not everything, Your Honor, but
21 I --

22 THE COURT: Okay. Here's the deal: You may -- we
23 will enter a protective order that allows you to designate
24 those things that are not publicly available under the new
25 statute. God help us all if we have a fight about that.

Proceedings

1 Obviously, if the plaintiffs have the need -- if
2 Plaintiff has a need to challenge that, it will be challenged.

3 But I do want to ask the plaintiff, why do you need
4 public disclosure of these officers' misconduct? The
5 appropriate misconduct for disclosure would be the conduct
6 that is introduced at trial, and there's no protection against
7 that. So why do you care, except making the defendants' lives
8 harder like they've tried to make your client's life harder?

9 MR. OLIVER: Thank you, Your Honor.

10 I mean, we care because the --

11 THE COURT: You're a champion of the First
12 Amendment; is that right?

13 MR. OLIVER: Well, no. I mean, not so -- not even
14 so much. It's always more basic than that. We -- my
15 interpretation, and I do a lot of freedom of information law
16 practice, is, obviously, that law enforcement disciplinary
17 records are now presumptively public. So my position is I
18 couldn't sign something that say -- that would designate them
19 as confidential, you know --

20 THE COURT: Keep in mind, you don't have to sign it,
21 I just have to order it.

22 MR. OLIVER: Of course, Your Honor. And in response
23 to that, when we've had this dispute with the City in the
24 past, usually what the courts have ended up doing, and the
25 example we gave in the letter was Judge Gorenstein recently in

Proceedings

1 the Southern District, in sweeping litigations over the summer
2 of 2020 protests said no to sort of blanket-predesignations,
3 which is what defendants want to do; yes to if you have a good
4 faith basis, you designate it and then we can challenge it,
5 which is what we've proposed and what I think I hear
6 Your Honor is saying the Court is going to do, or might do.

7 THE COURT: So I'm going to do that. I'm going to
8 do that.

9 I will say that if the City wants to withhold
10 particular information that it thinks is not available
11 publicly, then you've got to do the equivalent of a privilege
12 law and tell us what the information is. You want to go
13 through all that work, more power to you. All right. So
14 that's my ruling on the confidentiality order.

15 Now, having said that, I'm sympathetic if you were
16 sick. I understand that people get sick especially these days
17 and it's hard to work, although I don't understand why you
18 couldn't get someone to cover for you for doc production, but
19 it's been slowed up, like, forever.

20 So what we're going to do is, within the next two
21 weeks, the plaintiff is going to take the defendants'
22 depositions. If these newly disclosed documents require
23 taking those depositions a second time and I'm convinced of
24 that, and I think I will apply a low threshold because the
25 documents should have been produced, then the City will pay

Proceedings

1 the plaintiff's attorneys' fees for those second depositions.

2 Now, you all are free to work out something else,
3 but if you're asking me to rule, that's what I am going to do.

4 Next, the TextNow subpoena. That's still an issue?

5 MR. OLIVER: Yes, Your Honor. Although it's a
6 consent application, yes --

7 THE COURT: Yeah, it's a consent application but I'm
8 not going to consent, okay? I can't go around subpoenaing
9 foreign companies. I have no subpoena power in Canada.

10 MR. OLIVER: Our understanding, Your Honor, and this
11 is based on communications with TextNow, is that they'll honor
12 a so-ordered subpoena from a United States District Judge.

13 THE COURT: You might be right about that. Maybe
14 they would, but when I issue a subpoena, which is a command to
15 somebody to produce documents, it's not an invitation, it's a
16 command, I'm asserting the power of the United States Courts
17 against that foreign citizen and that is inconsistent with the
18 responsibilities of the Judiciary.

19 So you might figure it as, well, it's just a
20 formalistic, but there's more to it from my perspective. I
21 don't care if the Canadian company voluntarily complies or
22 not, I'm not going to issue a subpoena that I know is improper
23 on its face and that I could never possibly enforce if the
24 company changed its mind and decided not to do that.

25 We have procedures for getting discovery from

Proceedings

1 foreign companies, right? We have the Hague Convention, we
2 have Letters Rogatory, there are several other devices that
3 you could use. You can take a deposition at the U.S. embassy
4 in wherever they are in Canada, at the Consulate. There are
5 all kinds of things you can do that they're doing as
6 voluntary, but don't pull me into what is essentially an
7 illegal act. So I'm got going to do that.

8 MR. OLIVER: Understood, Your Honor, and I didn't
9 mean to -- that's not what we meant to be doing and we -- I
10 hear you loud and clear.

11 THE COURT: I know, and all this is, is a failure to
12 communicate. You only saw it from your perspective but I have
13 a different perspective than yours which is one reason why,
14 when you make changes to the schedules, you need to bring me
15 into it.

16 Okay. Now, on the motion to compel, are we still
17 fighting over Interrogatory One?

18 MR. SCHEMITSCH: Plaintiff is unwilling to produce
19 that absent a confidentiality stipulation. I believe their
20 position is that they're unwilling to produce any of the
21 responses absent a confidentiality stipulation on them.

22 THE COURT: Okay.

23 Let me just ask the defendants to reverse the
24 question I had on the officers' information:

25 Why do you need this public?

Proceedings

1 MR. SCHEMITSCH: Your Honor, we believe we're
2 entitled to this information --

3 THE COURT: No, no, no, no, you're not -- you're
4 entitled to it if in the course of my discretion, I determine
5 it's appropriate for you to have it. And if you can't give me
6 a single reason -- and you're going to get it. We're not
7 talking about giving you the information, you're going to get
8 it.

9 The question is, for people who aren't directly
10 involved in the lawsuit, why should their addresses and phone
11 number be publicized, other than as a point of intimidation
12 brought by your clients on the plaintiff's family members?
13 Why?

14 MR. SCHEMITSCH: Your Honor, to be clear, we have no
15 point of intimidation.

16 THE COURT: Then why don't you want to keep it
17 confidential? What is the gain for you in this lawsuit other
18 than intimidation?

19 MR. SCHEMITSCH: There's no gain. It appears that
20 Plaintiff's forestalling providing this information.

21 THE COURT: He's forestalling because you won't
22 agree to keep it confidential and you can't give me a reason
23 why you won't keep it confidential other than your feeling of
24 entitlement, and that's not a very persuasive means or reason
25 for me to exercise my discretion in your favor.

Proceedings

1 So the confidentiality order will also protect that
2 information, although, of course, it will be disclosed to the
3 defendants -- to the plaintiffs -- to the defendants.

4 Okay. Now, Interrogatories 11 and 12 and Document
5 Request 21; have the rulings that I've made settled those
6 issues?

7 MR. OLIVER: Your Honor, Plaintiff, although --
8 although we don't think it's appropriate or relevant, we -- in
9 the issue - in the interest of marrying the issues,
10 Your Honor, we agreed as to meet and confer today, that we
11 would produce any responsive information if there is any if
12 the Court entered a confidentiality order. So --

13 THE COURT: Include in the protective order. Let's
14 have it all in one place, okay?

15 MR. OLIVER: Yes, Your Honor. So, yes, we are
16 prepared to just -- to respond as long as we can do so
17 confidentially.

18 THE COURT: Okay. I understand because your point
19 about, well, it's not admissible in evidence at trial, well,
20 we don't know that until we see it. If, for example, someone
21 has been convicted of perjury, it certainly can be used at
22 trial. I doubt your client's family has anything like that
23 but we don't know because you're not producing them. So
24 certainly valid to produce them under the same level of
25 protection, but I don't want to do a separate confidentiality

Proceedings

1 order.

2 The protective order I'm going to enter that will
3 handle all of these disputes in the manner in which I've
4 described is without prejudice to any parties' objections to
5 that order as articulated in the pending motions. So I'm not
6 asking you give up anything, I'm asking you to consent to an
7 order that puts into effect the rulings that I've come up with
8 today. Your rights to not go along with it are fully
9 preserved.

10 MR. OLIVER: Understood, Your Honor.

11 THE COURT: This, again, is my order. It's not your
12 order. I'm interserted in hearing what you think. I've heard
13 what you think, and, so, it's going to be my order. It
14 doesn't have to be a stipulation as far as I'm concerned.

15 Okay. Next, litigation funding.

16 MR. OLIVER: Your Honor, in fact, we -- we provided
17 a response to that before the joint letter went in. I think
18 it was just a mistake that an artifact in the joint letter
19 that the dispute was raised at all.

20 Am I right, Mr. Schemitsch?

21 MR. SCHEMITSCH: That's correct.

22 THE COURT: All right.

23 Before I get to the motion to dismiss, anything else
24 in discovery that you've raised that I haven't ruled on? And
25 is not an open invitation to put in new things. Anything

Proceedings

1 that's still open?

2 MR. SCHEMITSCH: Just to clarify on Defendants'
3 Document Request 21, which is seeking the release for one
4 160.50 and 160.55, would that be covered by the protective
5 order, as well, Your Honor?

6 THE COURT: Correct. This is just for discovery.
7 It's going to be confidential. Let's see what's out there.

8 MR. BURNS: Your Honor, may I?

9 THE COURT: Sure.

10 MR. BURNS: On Friday -- well, maybe more accurately
11 a week ago on Tuesday, my client wound up getting a letter
12 from the New York City Conflict of Interest Board and it's a
13 complaint that Mr. -- Plaintiff, Mr. Sherwood, seems to have
14 initiated, although I'm not sure. And on Friday, I entered --
15 put in a notice of appearance for that matter with -- and
16 discussed with the Enforcement Chief the nature of the -- of
17 the complaint. They have made a finding of probable cause,
18 which I am disputing with them separately because I don't
19 think they're within their jurisdiction to involve themselves
20 in this matter for a lot of other reasons.

21 I've found out from those conversations that there
22 was a Department of Investigation investigation conducted in
23 coordination with COIB. So this is brand new information.
24 Again, I'm in a position where our firm also represents
25 Detective Sturman in the disciplinary matter that is identical

Proceedings

1 to the COIB and somewhat tangential to this matter, and it's
2 the NYPD disciplinary matter that is going forward and that's
3 scheduled for the end of the month.

4 So the -- what I need is the COIB, that information,
5 I don't know if the City can get information from them. They
6 usually do operate in a highly confidential matter, and also
7 the Department of Investigation report that was done there
8 last. So this is just fresh, ripe from Friday.

9 THE COURT: Mr. Oliver, what do you have on this new
10 thing? Anything? Is it instigated by your clients?

11 MR. OLIVER: Your Honor, we just learned about this
12 at noon today when we talked to Mr. Burns. We then
13 investigated with our client. He has a -- had a dim memory of
14 maybe making some -- some complaint to the Conflict of
15 Interest Board. He searched through his emails to try to find
16 any records that might relate to that and he found nothing
17 that responded.

18 So it sort of rung a bell, but there's certainly no
19 documents or anything -- you know, it's certainly not
20 something he remembers specifically doing and he didn't -- was
21 not able to find any documents that reflected it.

22 I mean, certainly, we ask for all documents related
23 to all investigations from the City. We didn't specifically
24 say COIB because we weren't thinking COIB. We did say DOI.
25 So I'm knocking on wood that those records would pop in

Proceedings

1 response to the documents that the City will be producing.

2 THE COURT: Okay.

3 Mr. Burns, you will get his deposition and check his
4 recollection, but if there's no documents on it that the
5 plaintiff has, you can't get blood out of a stone. I'm not
6 going to make the plaintiff go to the City or go to whoever
7 the agency is and acquire all of these documents in order to
8 give them to you. You --

9 MR. OLIVER: Well, we get the City to do that.

10 THE COURT: Look, I'm not going to make the
11 plaintiff do that.

12 MR. BURNS: Okay.

13 THE COURT: Okay?

14 MR. BURNS: And just as a matter of scheduling,
15 Your Honor, personally, I have an elderly parent. She's very
16 ill at the moment and I would just ask if the Court can give
17 us a little bit more time than two weeks. To be in the middle
18 of taking depositions -- we entered the case a little bit
19 later than the other parties and, therefore, I would just ask
20 if we could get some more time.

21 Also in consideration of the fact that, from my
22 information, the end of June, I think it might be the 28th
23 although I'm not sure, Detective Sturman is going forward with
24 the disciplinary hearing which is identical to the -- to the
25 complaint here and it's directly related to the complaint.

Proceedings

1 I'm not asking for a stay because there really is
2 not a basis that for that, but it might work better for the
3 parties if there's a little bit of flexibility in gathering
4 that information.

5 THE COURT: What are you asking for, specifically?

6 MR. BURNS: I would ask if the Court could give me
7 until the middle of July until we complete discovery. I -- on
8 my personal end, I know that the next two weeks might be very
9 difficult for me to be involved in the proceedings.

10 THE COURT: July 5th. And I'll tell you something
11 else, Mr. Burns: If you're unable to attend any depositions
12 within the next couple or few weeks because of your personal
13 situation, you'll get the transcript. If you think you have
14 more questions, I'll bring them back. You're holding up the
15 case any more for people being -- people having understandable
16 but a lot of lawyers in this case and we have to get it going.

17 MR. BURNS: Thank you, Your Honor.

18 THE COURT: Okay.

19 All right. Now, on the motion to --

20 MR. OLIVER: I'm so sorry, Your Honor, just -- just
21 in terms of the -- I just want to make sure that I understand
22 the Court's order about the depositions that are to take place
23 and the document production that is -- that is supposed to
24 happen because I know that Mr. Burns has reasons, but we still
25 haven't gotten any documents from Detective Sturman. And, so,

Proceedings

1 I know that's going to happen soon. I think Mr. Burns
2 estimated that he'd be able to get it done in the next few
3 days absent some, you know -- a development, you know, that
4 might prevent it, but just trying to understand exactly what
5 the Court's direction is as to depositions --

6 THE COURT: What I'm trying to do is incentivize
7 both Mr. Burns and Mr. Schemitsch to produce the documents as
8 soon as possible so that they aren't exposed to attorneys'
9 fees to reconvene depositions based on the new documents.

10 Now, that applies a little bit more to the City than
11 it does to Mr. Burns because if Mr. Burns' mother is in bad
12 shape, he may not be able to do it. But, Mr. Burns, if you
13 can get those documents within the next few days, please
14 produce them.

15 MR. BURNS: Yes, Your Honor, although I don't
16 believe there are, but we'll diligently work towards making
17 that happen.

18 THE COURT: I will say, Mr. Oliver, there's a pretty
19 good chance there aren't any documents.

20 MR. OLIVER: Understood.

21 THE COURT: Okay.

22 Now, with regard to the motion to dismiss, I'm going
23 to grant it in part and deny it in part. I'm mostly going to
24 deny it. I'm obviously granting that part as to those state
25 law claims where no notice of claim was filed. Plaintiff

Proceedings

1 hasn't opposed that.

2 The reason I'm denying the substantive First
3 Amendment claim is the following:

4 First of all, I don't have any question about the
5 plaintiff engaging in protected conduct. In fact, I think
6 this is as protected -- this is petitioning the Government,
7 okay? So I don't think there's any question about protected
8 conduct. I'm not even sure the defendants think there's much
9 question about that.

10 Retaliatory motive is something that I'm not going
11 to decide in the context of a motion to dismiss -- I'm sorry,
12 in the context of this motion. It seems to me motive is
13 always difficult for resolution on a pretrial motion and it's
14 particularly difficult here. There are certainly actions of
15 the defendants which I don't think are denied, but assuming
16 them to be true for purposes of this motion, at least suggest
17 that there's a mixed motive in some of the responses and part
18 of it was retaliatory and, you know, I just can't see -- if I
19 were going to grant judgment as a matter of law, I'd probably
20 grant it that it was retaliatory, but I'm not doing that.
21 There's factual issues and I'm not going to do that.

22 Then there's the question of, well, the plaintiff
23 didn't stop his conduct and so he wasn't chilled. And I think
24 the defendants are right that there's a fair amount of case
25 law that suggests that if the plaintiff keeps doing what he's

Proceedings

1 doing, then he's not chilled. The problem I have with those
2 cases, as applied to this case, is that that proxy, a
3 plaintiff not being chilled, is usually a pretty good
4 indication of whether an objective person would be chilled.
5 This plaintiff is not an objective person. I mean, it's clear
6 that most people would have been, based on his allegations,
7 would have been intimidated out of doing this, and he's not.
8 Now, the fact that he's got a thick skin doesn't mean the
9 average person wouldn't be intimidated. And I think that's
10 important in this case where the difference between the
11 objective and the subjective is so extreme.

12 Looking at this conduct, again, from the way
13 plaintiff describes it, any reasonable person would be
14 deterred and chilled and the fact that plaintiff wasn't,
15 doesn't mean much to me, at least it doesn't mean much to me
16 as a matter of law.

17 Okay. The bigger issue for me, and I think this is
18 a closed question, is the emotional harm. Let me hear from
19 plaintiffs' attorneys.

20 If the plaintiff took the stand and was asked the
21 question, what harm did you suffer as a result of this course
22 of conduct, what would he say?

23 MR. OLIVER: I mean, I think he would say that he
24 was frightened and intimidated by the individual interactions
25 with officers. I think he would say that it caused him a

Proceedings

1 tremendous amount of anxiety and, you know, I mean -- I think
2 even also say it gave him -- not -- although he pushed through
3 with his thick skin, it gave him pause and made it more
4 difficult for him to continue to engage in the same kind of
5 reporting and following-up on complaints that he had engaged
6 in before this series of incidents.

7 THE COURT: And if he was asked on
8 cross-examination, which one or ones of the actions made him
9 feel particularly intimidated or vulnerable, which ones would
10 he settle on for that?

11 MR. OLIVER: I'm not sure I know the answer to that
12 and I'm not -- I don't think I want -- he's here, but I don't
13 think I would like to put him on the stand, if it's okay with
14 Your Honor.

15 THE COURT: Yeah.

16 MR. OLIVER: I mean, I have a feeling -- I have a
17 feeling that it would be -- it might be insistence, you know,
18 those texts, you know, from those texts through TextNow, you
19 know, but I don't know the answer to that.

20 THE COURT: Okay. Certainly, I don't want to hear
21 from him now. I'm just talking hypothetically about can there
22 be, under any view of this motion that will relate to the
23 plaintiff, could there be damages that the jury will find from
24 emotional distress and fear.

25 And while, like I said, I think the question is

Proceedings

1 close, I think the jury ought to determine that issue, not me.
2 I haven't heard him. I don't want to hear him today, and I
3 don't know how he's going to come across.

4 The jury, as often happens in so-called emotional
5 injury cases, might be a little more realistic than lawyers
6 sometimes and say this guy is just making up damages, he
7 wasn't intimidated at all. But I'm not going to rule on that
8 as a matter of law. So I'm going to let that issue go to the
9 jury, as well.

10 Next, I think the allegations against Officer Reis
11 are adequate. I think it's clear that he's part of a pattern
12 of conduct here and the pattern is not that hard to discern,
13 you know. Again, construing the facts most favorably to
14 Plaintiff, not finding any facts, I'm just saying based on the
15 plaintiff's allegations, it seems to me that he fit right in
16 there and, in deed, I'd have to assume it's true that he
17 called the plaintiff 15 times after the 311 complaints, that
18 he refused to give his name and then hung up, and that was
19 really the starting point for what was to follow.

20 That's my legal ruling. Again, I want to emphasize
21 that there's always a chance the jury may say that this
22 plaintiff was a little bit off the wall from the way he
23 pursued this so zealously, but that's for the jury to say, not
24 for me to say. I'm going to put that issue to the jury.

25 Now, what I think is a very easy claim for me is the

Proceedings

1 Monell Claim. I think this is a Monell Claim. You know,
2 you've got a crusader out there who's trying to get people to
3 park legally, and it's a widespread practice of not parking
4 legally, and according to the complaint, trying to intimidate
5 him for his crusade, which is a legal crusade. The law
6 doesn't allow the NYPD or anyone else do this.

7 And I have to mention this on the side, of course
8 those of us who have lived in New York, we understand that
9 there is some, from time to time and place to place without
10 quantifying it, there is some disregard for the requirements
11 of following the law in this kind of instance. I mean, when I
12 walk to court everyday, and it doesn't involve this case, but
13 I see all these vehicles with construction worker vests in the
14 windshield and I know what's going on and nobody else is
15 allowed to park there.

16 So, yeah, I know that's not this case, but the
17 pattern of these things happening to the plaintiff is clearly
18 enough to me to suggest a Monell Claim because it's a practice
19 that the City really could have known about, I'm not saying
20 they did or didn't but it's not implausible that they did know
21 about it. And the fact that they, you know, do -- from time
22 to time, they come down on officers for doing this kind of
23 thing, it kind of reminds me of the scene with seeing with
24 Claude Rains in Casa Blanca when he's confronted and he says,
25 "gambling, gambling, I'm shocked, shocked. Who knew there was

Proceedings

1 gambling going around there." Because as soon as the City
2 does anything about this, the practice resumes with impunity.

3 Again, I'm not finding those facts, I'm simply
4 saying that's the argument that plaintiff is going to make and
5 I think the allegations are sufficient to support it, so I'm
6 denying that, as well.

7 And like I said, the state law claims are done.

8 MR. OLIVER: I'm so sorry, Your Honor. I'm just
9 seeking clarity on what the Court is saying about the state
10 law claims. The notices of claim were filed and accepted on
11 the state law claims.

12 THE COURT: That's not my understanding. They were?

13 MR. OLIVER: Yes, Your Honor, that's right. They
14 were filed -- we filed actions seeking to have the notices of
15 claim deemed timely filed in State court. We prevailed on
16 both of those actions and there -- there is proof to that
17 effect in the record. I'm sorry I can't tell you exactly
18 where in the motion to dismiss briefing it is, but the State
19 courts did rule that the notices of claim that we filed out of
20 time were timely filed *nunc pro tunc* and, so, the -- that's
21 the status of the state law claims and the notice of claim.

22 THE COURT: I did not understand that.

23 Do the defendants have any different understanding?

24 MR. SCHEMITSCH: Just to clarify, that's
25 specifically only with two dates of incident. That's with, I

Proceedings

1 believe, the September 10, 2021 date of incident and the
2 October 18, 2021 date of incident.

3 MR. OLIVER: I'm so sorry, that's correct. That's
4 right, Your Honor. As to those two incidents, there are
5 notices of claim. As to the other two incidents, there were
6 not notices of claim.

7 THE COURT: Okay. So the allowed incidents are this
8 action, and the disallowed incidents are not part of this
9 action, although I don't think that the fact that the state
10 claims have been partially dismissed in any way limits the
11 plaintiff in putting in evidence of those two claims in
12 support of his Monell Claim or the motivation of the officers
13 or any other relevant issue in the case. He can't just
14 recover money from them.

15 Okay. Anything I've left out in the motion? Okay.
16 Anything else we need to talk about?

17 MR. OLIVER: I just have one question, I think,
18 Your Honor. We had 30(b)(6) deposition notices out there, as
19 the Court's ordered, to conduct the parties' -- the
20 defendants' depositions extend to the 30(b)(6) notice or are
21 we just supposed to work everything out and get it all done by
22 July 5th?

23 THE COURT: If you give me a question like that, I'm
24 going to give you the answer you expect. The latter. The
25 latter; get it done by July 5th.

Proceedings

1 MR. OLIVER: Okay. Thank you, Your Honor.

2 THE COURT: All right.

3 Thank you all for calling in. Please try to work
4 your disputes out before you bring them to me. I'll wait for
5 the protective order that you're going to do that puts all of
6 my rulings into it, but I really think it should be submitted
7 in short order by the end of the week, okay?

8 We are adjourned. Thank you.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25